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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058098
Party	Defendant Craig Voyton
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Submission	Answer
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Date	12/09/2013
Attachments	Answer to Petition to Cancel Trademark.pdf(24302 bytes)

**IN THE UNITED STATES PATENT AND TRADE MARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4,278,726
Cancellation No. 92058098
Mark: SMARTGRASS
Filed:
Registered: January 22, 2013

Chris HAYMAN,)	
)	
Petitioner,)	
)	
v.)	
)	
Craig VOYTON,)	
)	
Registrant.)	
)	

REGISTRANT'S ANSWER TO THE PETITION FOR CANCELLATION

Registrant, Craig VOYTON, an individual, hereby answers the allegations set forth in Petitioner, Chris HAYMAN's Petition for Cancellation of U.S. Registration No. 4,278,726 (the "Mark").

1. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 1 of the Petition for Cancellation, and therefore denies those allegations.

2. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 2 of the Petition for Cancellation, and therefore denies those allegations.

3. Registrant denies the allegations contained in Paragraph 3 of the Petition for Cancellation.

4. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4 of the Petition for Cancellation, and

therefore denies those allegations.

5. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 5 of the Petition for Cancellation, and therefore denies those allegations.

6. Registrant denies the allegations contained in Paragraph 6 of the Petition for Cancellation.

7. Registrant admits that he filed a use-based application to register SMARTGRASS, but denies the remaining allegations contained in Paragraph 7 of the Petition for Cancellation.

8. Registrant denies the allegations contained in Paragraph 8 of the Petition for Cancellation.

9. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 9 of the Petition for Cancellation, and therefore denies those allegations.

COUNT I: Fraud in the Procurement of the Registration

10. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 10 of the Petition for Cancellation, and therefore denies those allegations.

11. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Petition for Cancellation, and therefore denies those allegations.

12. Registrant denies the allegations contained in Paragraph 12 of the Petition for Cancellation.

13. Registrant denies the allegations contained in Paragraph 13 of the Petition for Cancellation.

14. Registrant denies the allegations contained in Paragraph 14 of the Petition

for Cancellation.

15. Registrant denies the allegations contained in Paragraph 15 of the Petition for Cancellation.

COUNT II: Priority and Likelihood of Confusion, False Suggestion of Connection

16. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Petition for Cancellation, and therefore denies those allegations.

17. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 17 of the Petition for Cancellation, and therefore denies those allegations.

18. Registrant lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 18 of the Petition for Cancellation, and therefore denies those allegations.

19. Registrant denies the allegations contained in Paragraph 19 of the Petition for Cancellation.

20. Registrant denies the allegations contained in Paragraph 20 of the Petition for Cancellation.

AFFIRMATIVE DEFENSES

Without admitting any allegations in the Petition for Cancellation not otherwise admitted, Registrant avers and asserts affirmative defenses as follows:

FIRST AFFIRMATIVE DEFENSE
(Prima Facie Ownership)

Registrant's existing trademark was properly and lawfully registered with the United States Patent and Trademark Office and has not been contested until the filing of the instant Petition.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

Petitioner's claims are barred, in whole or in part, by Petitioner's waiver of any rights in and/or to the referenced trademark.

THIRD AFFIRMATIVE DEFENSE

(Laches)

Petitioner's claims are barred, in whole or in part, by the Doctrine of Laches.

FOURTH AFFIRMATIVE DEFENSE

(Trademark Misuse)

Petitioner's claims are barred, in whole or in part, because Registrant is misusing the trademark registration process to invalidate the legitimate use and registration of Petitioner's trademark.

FIFTH AFFIRMATIVE DEFENSE

(Mutual Agreement)

Petitioner's claims are barred, in whole or in part, because Registrant expressly or impliedly agreed to the distribution of assets of the company such that Registrant owned all right, title and interest in the subject trademark.

SIXTH AFFIRMATIVE DEFENSE

(Lack of Priority)

Petitioner's claims are barred, in whole or in part, because there is no factual basis to support a claim of priority over Registrant's trademark.

SEVENTH AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Petition for Cancellation, in whole or in part, fails to state a claim upon which relief may be granted, and therefore should be dismissed.

EIGHTH AFFIRMATIVE DEFENSE

(Unclean Hands)

Petitioner's claims are barred, in whole or in part, by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

(No Fraudulent Conduct)

Petitioner's claims are barred, in whole or in part, because Registrant has not engaged in any deceptive conduct.

TENTH AFFIRMATIVE DEFENSE

(Breach by Petitioner)

Petitioner's claims are barred, in whole or in part, because Petitioner breached the applicable ownership agreement with Registrant.

ELEVENTH AFFIRMATIVE DEFENSE

(Reservation)

Registrant currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, affirmative defenses available. Registrant reserves the right to assert additional affirmative defenses in the event that discovery indicates it would be appropriate.

Respectfully submitted,

Dated: December 9, 2013

ULWELLING SIDDIQUI LLP

 /s/ Daniel M. Josephson
Daniel M. Josephson
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Attorneys for Registrant,
Craig Voyton